SUPREME COURT, U. S.

MOTION FILED

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1971

No. 71–462

GLENN W. BRICKER
Petitioner

vs.

SCEVA SPEARE MEMORIAL HOSPITAL
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF NEW HAMPSHIRE

MOTION OF AMERICAN COLLEGE OF LEGAL MEDICINE FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE

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College of Legal Medicine

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The American College of Legal Medicine hereby respectfully moves for leave to file the attached brief amicus curiae in this case. The consent of the attorney for the petitioner has been obtained. The consent of the attorney for the respondent was requested but refused.

The American College of Legal Medicine is the national medical organization that fulfills the role in relation to the specialty of Legal Medicine that the American College of Surgeons, American College of Cardiology and American College of Radiology (to cite a few) fulfill in relation to their respective disciplines.

With the exception of six Honorary Fellows, the 182 members of the College are Doctors of Medicine, of whom 132 also hold a professional law degree.

In the case at bar, the fact that petitioner, whose competence as a physician and surgeon is undisputed, devoted a portion of his time to the practice of Legal Medicine, serving as a deputy sheriff, medico-legal consultant to the Grafton County Attorney, accident investigator for the Federal Aviation Administration, and on rare occasions testified for plaintiffs in medical malpractice cases was accepted by respondent as a substantial charge against him in arriving at the decision to terminate petitioner's medical staff affiliation.

The Trial Court was requested by respondent to find as fact that some if not all of these activities entered into by petitioner were not in the best interest of the respondent, and the Court so found. (Certified Record, Reserved Case - Defendant's Requests for Findings of Fact Nos. 19 and 20)

This unprecedented action by the Trial Court which was sustained by the New Hampshire Supreme Court has the effect of condoning a gross infringement upon the petitioner's right of free speech in violation of the First Amendment of the Constitution of the United States.

The petitioner treated this constitutional question as a subsidiary matter whereas it is in fact central to the case.

To allow this precedent setting decision to stand will have the effect of serving notice upon the members of the medical profession that this Honorable Court permits and condones the untenable situation wherein plaintiffs in medical malpractice actions find it extremely difficult, if not impossible, to obtain medical expert testimony in meritorious cases. The adverse ramifications upon our society of such a philosophy are obvious.

If the argument of your amicus is accepted, it would be dispositive of this case.

Respectfully submitted,

LAWRENCE V. HASTINGS

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INTEREST OF AMICUS

The interest of your amicus is set forth in the motion to which this brief is attached.

QUESTION PRESENTED

Is a physician who is a staff member at a hospital which receives substantial government assistance under the Hill-Burton Act and from local governments denied rights secured to him under the First, Fifth, and Fourteenth Amendments of the Constitution of the United States when the hospital, in proceedings for the non-renewal of his staff membership, receives as evidence against him testimony and other information that he is active in the field of Legal Medicine and as an expert witness in medical malpractice cases?

STATEMENT OF THE CASE

The case has been adequately stated in the Petition for Writ Of Certiorari To The Supreme Court Of The State Of New Hampshire.

REASON FOR GRANTING THE WRIT

Your amicus adopts and supports the second Reason For Granting The Writ set forth on pages 11 and 12 of the Petition For Writ Of Certiorari.

The answer to the question presented in this brief must be "Yes". The respondent's discrimination against the petitioner because of his activities in the field of Legal Medicine and the fact that he testified in medical malpractice cases is an infringement upon his personal right to practice his profession and express his professional opinion before the courts of the land. The petitioner is, as a result of the action by respondent and the courts, unfairly and unjustly classified in violation of the Fourteenth Amendment. (See Sams v. Ohio Valley General Hospital Association, 413 F. 2d 826 (C.A. 4th Circuit, 1969)

The powerful arguments of public policy against any practices tending toward intimidation of witnesses generally and expert witnesses for plaintiffs in medical malpractice cases particularly, are well summarized in L'Orange v. Medical Protective Company, 394 F. 2d 57 (C.A. 6th Circuit, 1968) at pages 60-63.

Respondent's actions are akin to the crime of influencing a witness not to testify. 18 U.S.C.A. § 1503.

It should also be noted that a lawyer who attempts to do what respondent pursues as a matter of policy (See testimony of respondent's witness Pascoe Roberts; Certified Record, Exhibit 7, page 251) would be subject to censure or even disbarment. 7 Am Jur 2d, Attorneys at Law, Section 27. Code of Professional Responsibility of

the American Bar Association, Canon 7, Ethical Consideration 7-27, Disciplinary Rule 7-109 (A) and (B), and note 89.

CONCLUSION

For reasons of basic fairness and the orderly administration of justice in the courts, the important issues clearly raised by the Petition herein merits the review of the judgment of the Supreme Court of the State of New Hampshire.

Respectfully Submitted,

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